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and Zheng*

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Guang Ping Zhu and Chi How
Cheung, on behalf of themselves
and all other persons similarly
situated

Plaintiff,

vs.

A Plus Kitchen Inc., “John
Doe” Zheng, and John Does
#1-10

Defendants.

Case No. 16-cv-5767

ANSWER TO COMPLAINT

Jury Trial Demanded

Defendants A Plus Kitchen Inc. and Zheng’s Answer to Plaintiff’s Complaint

Defendants A Plus Kitchen Inc. (“A Plus Kitchen”) and Zheng (collectively
“Defendants”), through their attorneys, hereby answer the Complaint (the “Complaint”) of
Plaintiff as follows:

NATURE OF THE ACTION

1. Defendants lack sufficient information or knowledge to form a belief about the truth of
the allegations in paragraphs 1-2 and on that basis deny them.

THE PARTIES

2. Defendants lack sufficient information or knowledge to form a belief about the truth of
the allegations in paragraphs 3-4 and on that basis deny them.

3. Defendants admit the allegations in paragraph 5 of the Complaint.

4. Defendants deny the allegations in paragraphs 6-13 of the Complaint.
5. Defendants lack sufficient information or knowledge to form a belief about the truth of the allegations in paragraph 14 and on that basis deny them.

JURISDICTION AND VENUE

6. The allegations in paragraph 15 of the Complaint comprise only conclusions of law or legal characterization, to which no responsive pleading is required. To the extent a response is required, Defendants deny.
7. Defendants deny the allegations in paragraph 16 of the Complaint.

COLLECTIVE ACTION ALLEGATIONS

8. Defendants lack sufficient information or knowledge to form a belief about the truth of the allegations in paragraph 17 and on that basis deny them.
9. Defendants deny the allegations in paragraphs 18-20 of the Complaint.

FACTS

10. Defendants admit the allegations in paragraph 21 of the Complaint.
11. Defendants deny the allegations in paragraphs 22-24 of the Complaint.
12. Defendants lack sufficient information or knowledge to form a belief about the truth of the allegations in paragraph 25 and on that basis deny them.
13. Defendants deny the allegations in paragraphs 26-32 of the Complaint.
14. Defendants lack sufficient information or knowledge to form a belief about the truth of the allegations in paragraph 33 and on that basis deny them.
15. Defendants admit the allegations in paragraph 34 of the Complaint.
16. Defendants deny the allegations in paragraphs 35-36 of the Complaint.

17. Defendants lack sufficient information or knowledge to form a belief about the truth of the allegations in paragraph 37 and on that basis deny them.
18. Defendants deny the allegations in paragraph 38 of the Complaint.
19. Defendants lack sufficient information or knowledge to form a belief about the truth of the allegations in paragraphs 39-43 and on that basis deny them.
20. Defendants deny the allegations in paragraphs 44-46 of the Complaint.
21. Defendants lack sufficient information or knowledge to form a belief about the truth of the allegations in paragraphs 47-50 and on that basis deny them.
22. Defendants deny the allegations in paragraph 51 of the Complaint.
23. Defendants lack sufficient information or knowledge to form a belief about the truth of the allegations in paragraphs 52 and on that basis deny them.
24. Defendants deny the allegations in paragraph 53 of the Complaint.

COUNT I
(Fair Labor Standards Act – Minimum Wage)

25. The allegations in paragraph 54 of the Complaint comprise only conclusions of law or legal characterization, to which no responsive pleading is required.
26. Defendants lack sufficient information or knowledge to form a belief about the truth of the allegations in paragraph 55 of the Complaint and on that basis deny them.
27. Defendants deny the allegations in paragraph 56 of the Complaint.
28. Defendants lack sufficient information or knowledge to form a belief about the truth of the allegations in paragraphs 57-59 and on that basis deny them.

COUNT II
(New York Labor Law – Minimum Wage)

29. The allegations in paragraph 60 of the Complaint comprise only conclusions of law or legal characterization, to which no responsive pleading is required.
30. Defendants lack sufficient information or knowledge to form a belief about the truth of the allegations in paragraphs 61-64 and on that basis deny them.

COUNT III
(Fair Labor Standards Act – Overtime)

31. The allegations in paragraph 65 of the Complaint comprise only conclusions of law or legal characterization, to which no responsive pleading is required.
32. Defendants lack sufficient information or knowledge to form a belief about the truth of the allegations in paragraph 66 and on that basis deny them.
33. Defendants deny the allegations in paragraph 67 of the Complaint.
34. Defendants lack sufficient information or knowledge to form a belief about the truth of the allegations in paragraphs 68-70 and on that basis deny them.

COUNT IV
(New York Labor Law – Overtime)

35. The allegations in paragraph 71 of the Complaint comprise only conclusions of law or legal characterization, to which no responsive pleading is required.
36. Defendants lack sufficient information or knowledge to form a belief about the truth of the allegations in paragraphs 72-75 and on that basis deny them.

COUNT V
(New York Labor Law – Spread of Hours)

37. The allegations in paragraph 76 of the Complaint comprise only conclusions of law or legal characterization, to which no responsive pleading is required.

38. Defendants lack sufficient information or knowledge to form a belief about the truth of the allegations in paragraphs 77-80 and on that basis deny them.

COUNT VI
(New York Labor Law – Unlawful deductions)

39. The allegations in paragraph 81 of the Complaint comprise only conclusions of law or legal characterization, to which no responsive pleading is required.

40. Defendants lack sufficient information or knowledge to form a belief about the truth of the allegations in paragraph 82 of the Complaint and on that basis deny them.

41. Defendants deny the allegations in paragraphs 83-85 of the Complaint.

42. Defendants lack sufficient information or knowledge to form a belief about the truth of the allegations in paragraphs 86-90 of the Complaint and on that basis deny them.

COUNT VII
(New York Labor Law – Wage Theft Prevention Act)

43. The allegations in paragraph 91 of the Complaint comprise only conclusions of law or legal characterization, to which no responsive pleading is required.

44. Defendants lack sufficient information or knowledge to form a belief about the truth of the allegations in paragraphs 92-96 and on that basis deny them.

DEFENDANTS' FIRST AFFIRMATIVE DEFENSE

45. The Complaint should be dismissed for failure to join an indispensable party.

DEFENDANTS' SECOND AFFIRMATIVE DEFENSE

46. Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

DEFENDANTS' THIRD AFFIRMATIVE DEFENSE

47. This Court lacks personal jurisdiction over Defendant.

DEFENDANTS' FOURTH AFFIRMATIVE DEFENSE

48. Plaintiffs' claims, in whole or in part, are barred by the applicable statute of limitations.

DEFENDANT'S FIFTH AFFIRMATIVE DEFENSE

49. Plaintiffs have been paid all money owed.

DEFENDANTS SIXTH AFFIRMATIVE DEFENSE

50. Even if it is determined that such money is owed to Plaintiffs, Plaintiffs cannot prove that any of the alleged violations of the FLSA was willful. Defendant's act or omission complained of, if any, was in good faith and Defendant had reasonable grounds for believing that their act or omission, if any, was not a violation.

DEFENDANT'S SEVENTH AFFIRMATIVE DEFENSE

51. The FLSA does not apply to Defendants because Defendants do not qualify for enterprise coverage under the FLSA.

DEFENDANTS' EIGHTH AFFIRMATIVE DEFENSE

52. Defendants' acts or omissions complained of, if any, were in good faith in conformity with and in reliance on any written administrative regulation, order, ruling, approval, or interpretation, of the Administrator of the New York Department of Labor Wage and Hour Division, or any administrative practice or enforcement policy of such agency with respect to the class of employers to which Defendants may have belonged.

DEFENDANT'S SIXTH AFFIRMATIVE DEFENSE

53. Defendants' non-compliant conduct, if any, was not willful.

DEFENDANT'S SEVENTH AFFIRMATIVE DEFENSE

54. Plaintiffs' claims are barred by the doctrine of waiver.

DEFENDANT'S PRAYER FOR RELIEF

Defendant demands a trial by Jury.

WHEREFORE, Defendant prays that this Court enter judgment denying all of Plaintiffs' claims for relief, that Plaintiffs take nothing by this action, and that Defendant be awarded their costs and disbursements in defending this action.

Date: August 17, 2016

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